

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929**

**RFA.No. 272 of 2006()**

**OS.1303/1995 of PRL.SUB COURT,THRISSUR**

**APPELLANT/DEFENDANT:**

**AMBUJAM R.MENON,  
CHAKKUNNATH,VENGANELLOOR VILLAGE,THALAPPILLY TALUK  
REPRESENTED BY POWER OF ATTORNEY HOLDER,  
BALASUBRAMANIAN, CHAKKUNNATH,VENGANALLOOR VILLAGE,  
THALAPPILLY TALUK.**

**BY ADV. SRI.G.UNNIKRISHNON**

**RESPONDENTS: PLAINTIFF:**

**JOSEPH,  
KALLOOR ESTATE, VENGANELLOOR VILLAGE, DESOM,  
THALAPPILLY TALUK, THRISSUR.**

**BY ADV. SRI.C.CHANDRASEKHARAN**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD  
ON 08/08/2007 ALONG WITH RFA NO. 112 OF 2007  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**K. PADMANABHAN NAIR, J.**

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**R.F.A. NO. 272 OF 2006**

**IN**

**R.F.A. NO. 112 OF 2007**

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**Dated this the 8<sup>th</sup> day of August, 2007**

**J U D G M E N T**

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These two appeals arise from the decrees and a common judgment passed in O.S. No.1303 of 1995 and O.S. No.799 of 1996 on the file of the Pri. Sub Court, Thrissur. The defendant in O.S. No.1303 of 1995, who is the plaintiff in O.S. No.799 of 1996, has filed the two appeals. Original Suit No.799 of 1996 was originally filed as O.S. No.203 of 1995 before the Munsiff's Court, Wadakkancherry. During the pendency of that suit the first defendant in that suit filed O.S. No.1303 of 1995 before the Sub Court, Thrissur against the plaintiff in O.S. No.203 of 1995. Subsequently, O.S.No.203 of 1995 was transferred to the Sub Court, Thrissur and re-numbered as O.S.No.799 of 1996. Since common questions of law and fact arose in both the suits, the suits were consolidated, tried together and disposed of by a common judgment. Original Suit No.1303 of 1995 was taken as the leading case and evidence was recorded in that case. Original Suit No.1303 of 1995 was

**decreed and O.S.No.799 of 1996 was dismissed. Challenging the decree and judgment passed in O.S.No.1303 of 1995 defendant in that suit filed R.F.A.No.272 of 2006. Challenging the decree and judgment passed in O.S.No.799 of 1996 plaintiff in the suit filed A.S.No.124 of 2006 before the District Court, Thrissur, which was subsequently withdrawn to this Court and numbered as R.F.A. No.112 of 2007.**

**2. For the sake of convenience, parties are referred to as arrayed in R.F.A. No.272 of 2006 which arises from O.S. No.1303 of 1995. In O.S. No.1303 of 1995 it was averred that respondent purchased the suit property as per sale deed No.1131/1968 of SRO, Chelakkara. Subsequently he obtained certificate of purchase No.3154/76 from the competent Land Tribunal and is in absolute possession and enjoyment of the same. It was averred that the suit property was rubber plantation. In the year 1988 rubber trees stood in the property were cut and removed and the area was replanted with rubber saplings and tapping had not yet commenced. It was averred that suit property was having an extent of 2.31 acres and comprised in Sy.No.1089 of Venganellur Village. It**

was averred that the total extent of the area covered by Sy.No.1089 is 4.06 acres and at the time of purchase there was no road through that property. It was averred that for the purpose of re-plantation works respondent constructed a road through the property in the year 1988 and that road is having a length of 170 mts. and 4 mts. width and it is lying east-west. It was also averred that respondent is the owner of a granite quarry and the road was being used for the purpose of transporting granite from the quarry. The distance to the road from the south-western corner of the property is 10 mts. and from the south eastern corner of the property is 18 mts. It was averred that a bit of land lying on the south of the road which is having a length of 18 mts. on the east and of 10 mts. on the west also belonged to the respondent. It was averred that on the south of the property there was a very old mud wall in existence. It was averred that on the south of the property of the respondent, the appellant was having ownership and possession of about 1.30 acres of property comprised in Sy. No.1089 and that property was also a rubber plantation. It was averred that appellant and her employees

**were allowed to use the pathway which lies inside the property of the respondent and he has no objection in the appellant and her men using that pathway. It was averred that 1.30 acres of property was purchased by his brother Shri K.I. Abraham in the year 1968. It was averred that respondent and his brother purchased properties on the very same day and as his brother was permanently settled in Tamil Nadu, the respondent was in possession, enjoyment and management of 1.30 acres of property owned by his brother also. It was averred that Appellant purchased property in the year 1993 from Shri K.I. Abraham and till that date respondent was managing the said property. Though they were fully aware of the fact that assignor had right and possession over 1.30 acres of property only, in the sale deed executed it was written that Abraham was having 3 acres of property in Sy. No.1089 and the respondent came to know about the same only recently. It was averred that the recitals in the sale deed were made in pursuance to a collusion between his brother and appellant. It was averred that respondent had signed the document as an attester to identify Abraham before the Sub**

Registry Office, but he was unaware of the contents of the document. It was averred that the appellant purchased the property with a mala fide intention of trespassing into the property of the respondent. It was admitted that appellant filed O.S. No.203 of 1995 before the Munsiff's Court, Wadakkancherry against the respondent and his children claiming title and possession over the property on the south of the pathway and a plot of 50 cents lying north of the pathway. It was averred that after filing such a suit appellant attempted to trespass into his property. It was averred that respondent and his children are having possession over 20 acres of property lying on the northern boundary of the suit property and it was necessary to get the southern boundary of the suit property fixed through court and for that purpose the suit was filed. The two reliefs prayed for in the suit were (1) to fix the boundary of the suit property and (2) for a decree of permanent prohibitory injunction restraining the appellant and persons claiming under her from trespassing into the suit property. The first relief was valued under Section 50 of the Court Fees Act and a fixed court fee of

**Rs.200/- was paid and the second relief was valued at Rs.5,000/- under Section 27(c) of the Court Fees Act and a court fee of Rs.100/- was paid.**

**3. Appellant filed a written statement denying the averments in the plaint. The averment that the respondent got 2.31 acres of property comprised in Sy. No.1089 under document No.1131/1968 was denied. It was contended that certificate of purchase was obtained by dubious methods. It was specifically contended that respondent did not get title or possession over 2.31 acres of land comprised in Sy.No.1089 of Venganellur Village either under the assignment deed or under the certificate of purchase and respondent was having no title or possession over the property scheduled to plaint. It was further contended that property was actually in the possession of the appellant and she purchased the same under sale deed No.584 of 1993 of SRO, Chelakkara, executed by Shri Abraham and under that sale deed she got title and possession over 3 acres of land comprised in Sy. No.1089. It was contended that she purchased other properties also and when she purchased the property there was a PWD road by**

name Chelakkara-Thozhupadom road and from that road a Panchayat road starts and proceeds westwards and the road takes deviation to east and on the side of that road 3 acres of property owned by her lie in two plots. It was contended that 2.50 acres of land which lies on southern side of the road and 50 cents on the northern side of the road absolutely belong to her and that was the property she purchased from Abraham under a sale deed. It was contended that Abraham purchased those properties under sale deed No.1133/1968 and in that document it was mentioned that properties purchased by Shri Abraham were comprised in Sy. Nos.1089, 1090, 1091, 1095 and 1099. But the assignor had no property in Sy.Nos.1091 and 1095. That fact was subsequently found out and stated in the sale deed executed by Abraham. It was contended that before the purchase of the property appellant made enquiries in the Village Office, the Village Officer inspected the property covered by document No.1133/1968 and issued a certificate to the effect that Abraham was having possession over 3 acres of property comprised in Sy. No.1089 and she purchased the property after ascertaining that fact.

**It was contended that on the northern side of the 50 cents situated on the north of road there is an old boundary wall separating the properties of the appellant and respondent. It was contended that suit was filed to see that whether the 50 cents lying on the north of the road can also be annexed to the property of the respondent. It was contended that she filed O.S. No.203 of 1995 before the Munsiff's Court, Wadakkancherry and the said suit was pending. The averment that respondent has got possession over a small plot on the south of the road having 10 mts. length on the west and 18 mts. length on the east was denied. The averment that appellant got possession over 1.30 acres of land only was also denied. The allegation that there was collusion between appellant and respondent's brother Abraham was denied. It was also contended that with full knowledge of these facts the respondent affixed his signature in the document as an identifying witness. So the appellant prayed for a dismissal of the suit.**

**4. Trial court raised the following issues:**

**"1. Whether the plaintiff got title and**

**possession over 2 acre 31 cents in survey No.1089/p of Venganellur Village as per document No.1131/68?**

**2. What actually is the southern boundary of plaint schedule property?**

**3. Whether defendant got title over 3 acres of land in survey No.1089 as per document No.584/93?**

**4. Whether the cause of action alleged, is true?**

**5. Whether plaintiff is entitled to for realise as claimed for?"**

**5. Original Suit No.203 of 1995 was filed by the appellant before the Munsiff's Court, Wadakkancherry. That suit was subsequently transferred to Sub Court, Thrissur and re-numbered as O.S. No.799 of 1996. In the plaint it was averred that the appellant purchased property under sale deed No.584/93 from Abraham and as per that sale deed she got 3 acres of land. It was averred that there was an estate road which joins the Panchayat road which in turn joins the Chelakkara-Thozhupadom road and the properties lie on the southern and northern side of the private road. It was averred that that road was having a width of 4 mts. and length of about 75 mts. It was averred that the suit properties lie in two**

**plots, namely 2.50 acres at southern side and 50 cents on the northern side of the road. It was averred that on the north of the plot lying on the north of the road, there was an old boundary constructed by granite stones. It was averred that the respondent attempted to demolish that boundary and trespass into appellant's property. So the appellant sought for a decree of permanent prohibitory injunction restraining the respondent from causing any damage to the existing boundary and trespassing into the property scheduled to the plaint.**

**6. Respondent filed written statement contending that the appellant did not get title or possession over the entire suit properties. It was contended that neither the appellant nor her predecessor-in-interest got title or possession over the properties scheduled to the plaint. Abraham had title and possession over only 1.30 acres of land. It was contended that Abraham and appellant colluded together and in the sale deed executed by Abraham in favour of the appellant it was fraudulently recited that an extent of 3 acres of land were conveyed to the appellant. It was contended that the**

respondent purchased the property under sale deed No.1131/1968 and obtained a purchase certificate from the competent Land Tribunal. It was contended that in the year 1989 rubber trees stood in the property were cut and removed and the property was re-planted with rubber saplings. It was contended that the pathway mentioned in the plaint was formed by the respondent for the purpose of transporting timber and that is a private pathway exclusively belonging to him. It was contended that on the south of the road there is a plot having 10 mts. length on the west and 18 mts. length on the east, which belonged to him and there was a very strong boundary through the southern boundary of that property and that is the boundary line dividing the property owned by respondent and appellant. It was contended that appellant was having property only on the south of the plot owned by him and lies on the south of the road. It was admitted that the respondent has no objection in the appellant using the pathway. It was contended that the property lying on the north of the pathway belongs to the respondent and appellant had no right over the same. It was contended that

**respondent had filed O.S. No.1303 of 1995 for fixation of southern boundary of the property owned by him.**

**7. Trial court raised the following issues in the suit filed by the appellant.**

**“1. Whether plaintiff got right and possession over the entire plaint schedule property?**

**2. Whether the alleged cause of action is true?**

**3. Whether plaintiff is entitled for a permanent prohibitory injunction?**

**4. Reliefs and costs?”**

**8. As I have already stated O.S. No.1303 of 1995 was decreed and O.S. No.799 of 1996 was dismissed. These two appeals arise from the decrees and common judgment passed in those cases. Learned counsel appearing for the appellant has argued that the trial court did not even understand the scope of the suits and it treated the suit filed by the respondent as a suit for declaration of title and recovery and putting up boundary. It is argued that a Commissioner was deputed from the court and he fixed a plot**

as shown by the respondent and title and possession of respondent over that plot was declared. It is argued that dismissal of O.S. No.799 of 1996 in its entirety is illegal. It is argued that even if it is found that appellant failed to prove the possession over the entire properties scheduled that is not a ground to dismiss the suit and the trial court ought to have decreed the suit in respect of the plots proved to be in the possession of the appellant. It is argued that the trial court was carried away by irrelevant materials. It is argued that the trial court was under the mistaken impression that appellant relied on a possession certificate issued by a Village Officer as her title deed. It is argued that without any basis the trial court had made totally unwarranted comments against D.Ws7 and 8 even though the respondent had no case that D.Ws.7 and 8 committed any illegality. It is argued that the trial court has raised issues which are totally irrelevant in relation to the pleadings and the prayer of the appellant to get the property identified and located as per the re-survey plan which has become final and conclusive was rejected without any valid reason. It is argued that even though there

**was no challenge against Ext.X1(f) re-survey plan which has become final among the parties, the trial court without any factual basis found that that plan is baseless.**

**9. Learned counsel for the respondent, on the other hand, argued that the respondent purchased the property in the year 1968. He obtained certificate of purchase from the competent Land Tribunal in the year 1976 and he is having absolute title, possession and enjoyment of the property scheduled in O.S. No.1303 of 1995. It is argued that the records produced in the case would establish that the extent of property comprised in Sy.No.1089 of Venganellur Village is only 4.06 Acres of land. Respondent purchased 2.31 acres in the year 1968 and appellant purchased the remaining extent of property in the year 1993. The predecessors-in-interest of the appellant had only 1.30 acres of property and hence she got only 1.30 acres. It is argued that with a mala fide intention to trespass into the property of the respondent appellant colluded with Abraham, brother of the respondent and the extent of the property conveyed was stated to be 3 acres in Sy.No.1089. It is argued that issues were settled**

**after hearing both sides and both sides went to trial after knowing the issues and the decrees passed by trial court are perfectly correct and legal and they do not call for any interference.**

**10. I have already extracted the pleadings and reliefs sought for in O.S. No.1303 of 1995. There was no prayer for any declaration of title or for recovery of possession. Respondent claimed title and possession over 2.31 acres of land in Sy. No.1089 of Venganellur Village under sale deed No.1131/1968 and a certificate of purchase No.3154/1976 issued by the Special Land Tribunal, Punkunnam, Thrissur. As I have already stated for the relief 'A' the court fee was levied and paid under Section 50 of the Court Fees Act as if it a relief not provided otherwise in the Court Fees Act. For injunction relief court fee was fixed under Section 27(c) of the Court Fees Act. Still, learned Sub Judge took the pain to raise an issue whether the respondent has got title and possession over 2.31 acres of land comprised in Sy.No.1089 of Venganellur Village and whether the appellant has got title over 3 acres of land in Sy.No.1089, though in O.S. No.799 of**

1996 the only relief sought for was for an injunction. In that suit also the trial court raised an issue regarding title. There was no such prayer either in O.S. No.1303 of 1995 or in O.S. No.799 of 1996. So the issue regarding title is not germane to the pleadings and those issues were totally unnecessary. Going by the pleadings the only issue arise for consideration in the suits is which is the dividing line of the property of the respondent and that of the appellant. As I have already stated since there is no prayer for declaration of title and possession, trial court can only fix the southern boundary of the property in the actual possession of the respondent in O.S.No.1303 of 1995. Likewise in the other suit the court can grant relief in respect of the property in the possession of the appellant. Even if the appellant is not having title over 3 acres of property comprised in Sy.No.1089 of Venganellur Village, she is entitled to be in possession of that property until and unless she is evicted from that property in accordance with law, provided she had proved possession over the same. There is no prayer for recovery of possession of any portion of the property in her possession. If she was found to

**be in possession of a lesser area, she is entitled to get a decree for injunction in respect of that property. The trial court raised issues which do not arise for consideration from the pleadings and wasted its time in considering those issues. On that count alone the decrees and judgment are liable to be interfered with.**

**11. Properties originally belonged to strangers. Shri K.D. Thomas purchased 12 acres and 21 cents of property comprised in Sy. Nos.1087, 1088 and 1089 under Exhibits A3 and A4 sale deeds. He claimed title and possession over properties comprised in Sy. Nos.1072, 1073, 1074, 1090, 1091 and 1092 also in addition to the properties comprised in Sy. Nos.1087, 1088 and 1089 of Venganellur Village. Shri K.D. Thomas was the younger brother of the father of the respondent. The respondent has two brothers by name K.I. Abraham and K.I. George. Evidence in the case shows that K.I. George is a practicing lawyer. Respondent purchased suit property and other properties under sale deed Nos.1110 and 1131 of 1968. Those were the assignments of lease hold right. Thereafter respondent filed a petition before the**

Special Land Tribunal, Punkunnam, Thrissur and Exhibit A2 purchase certificate was issued. Exhibit A2 purchase certificate was for 4 hectares and 34.22 Ares (10 acres and 73 cents) of land. Though extent and survey numbers are mentioned, boundaries of the properties assigned are conspicuously absent in Exhibit A2 purchase certificate. When a cultivating tenant applies for purchase of right, title and interest of the land owner, a Revenue Inspector will be deputed to inspect the land to prepare a plan and submits a report. Exhibit A2 produced before the court does not contain any plan or boundaries of the properties. Though the appellant purchased the properties on 23.3.1993, her predecessors-in-interest purchased the properties as per sale deed Nos.1133 of 1968. The document under which property was assigned in favour of Abraham was marked as Exhibit A5. A perusal of Exhibits A1 and A5 would show that both the documents were executed on the very same day. Exhibit A1 was registered at 10.30. a.m. on 20.12.1968 and Exhibit A5 was registered at 10.45 a.m. on the same day. After getting assignment of lease, the appellant obtained certificate of

**purchase also. It is very pertinent to note that the parties to these appeals have no case that the properties purchased by them lie as distinct and separate plots. On the other hand, the pleadings would show that the appellant and respondent claimed possession and title over compact plots. Though the respondent purchased properties including the suit property under two assignment deeds, he obtained a single certificate of purchase for the entire property. So the attempt should have been to find out the southern boundary of the entire property covered by the certificate of purchase.**

**12. Materials on record show that re-survey operations were held and respondent and predecessor-in-interest of the appellant filed appeal petitions before the Assistant Superintendent, Survey, for re-fixation of survey numbers. The applications filed by the predecessor-in-interest of the appellant as well as the respondent were signed by the respondent himself. Respondent had produced an authorisation given to him by Shri Abraham for conducting the case for him also. Accordingly respondent was examined and his statement was recorded. Records were perused and**

**actual possession of the property was ascertained by measurement. Thereafter it was reported that property can be sub divided. Sub division Nos.1, 4 and 5 were allotted to vendors of appellant. Property obtained by the respondent as per certificate of purchase No.3154/176 was also identified, located and numbered as sub division No.2. The property possessed by Mathukutty was also included in R.S No.53/2. President of the Cultural and Educational Trust No.297/86 was shown as the owner of the properties comprised in sub division No.3. The total area covered by R.S. No.53 was shown as 11.40 hectares and re-survey plan was finalised. Re-survey plan was marked as Exhibit X1(f) in the suit. Appeals filed by the parties were disposed of accordingly. Respondent filed No.6164 of 1999 to implead the State represented by District Collector, Thrissur and the Superintendent of Survey and Land Records, Wadakkancherry as additional defendants 2 and 3. He filed I.A. No.6162 of 1999 for amending the plaint by incorporating the name of State as well as the Superintendent of Survey and land Records, Wadakkancherry and also to incorporate an**

additional paragraph as six in the plaint to the effect that the Re-survey Plan was to be corrected in accordance with the plan submitted by the Commissioner in the suit. There was also a prayer to amend the relief portion by adding relief (C) after relief (B). The relief sought for was to to correct the Re-survey records in accordance with the report and plan submitted by the Taluk Surveyor in the case. The respondent also wanted to pay additional court fee. Petition filed to implead additional defendants was dismissed as not pressed on 27.9.2000. Petition filed for amending the cause title, pleadings and to incorporate relief, etc., was also dismissed as not pressed on 5.12.2003. So the records show that respondent filed an appeal against the re-survey plan prepared and wanted to amend the pleadings by incorporating a prayer to set aside the re-survey plan and correct the same in accordance with the plan and report submitted by the Commissioner in the suit. But subsequently, those petitions were dismissed. Time for filing a suit to set aside the said order finalising re-survey plan is also over. So the observation made by the trial court that Exhibit X1(f) is

**baseless is illegal and liable to be set aside. So long as Exhibit X1(f) is in force, the respondent is bound by the same.**

**13. Respondent had alleged collusion between his brother Abraham and the appellant. Abraham was examined as D.W.6. In fact the trial court after appreciating the evidence found that the allegation of collusion was not true. It is also to be noted that D.W.6 had deposed that he had no idea regarding extent of the properties comprised in reach survey numbers and his brother George was fully aware of those details and George had asked him to affix his signature in the sale deed executed in favour of the appellant. That part of the evidence of D.W.6 will show that the parties were aware of the fact that the statements in the documents regarding extent of properties comprised in each survey number was not correct.**

**14. Respondent claimed possession of 3 acres based on Exhibits B1 to B3 and oral evidence. Exhibit B1 is the agreement entered into between George and Balasubramanyan, power of attorney of appellant. Respondent was an attester to Exhibit B1. In Exhibit B1 it**

was stated that properties owned by the vendor was comprised in Sy. Nos.1072, 1073, 1074, 1075, 1089, 1090, 1091 and 1092 of Venganellur Village and the vender was in possession of 12.95 acres of properties comprised in those survey numbers. Exhibits B2 and B10 are the two sale deeds executed by Abraham and George in favour of the appellant. Respondent was one of the witnesses who identified Abraham before the Sub Registrar's office. Since the executant of Exhibit B10 was a practicing lawyer, thumb impression was not taken and no witnesses identified by him before the Sub Registrar. But it is evidently clearly that at the time of execution of Exhibits B2 and B10 respondent was physically present before the Sub Registrar's Office. In Exhibit B2 there is a recital to the effect that 3 acres of property comprised in Sy.No.1089 was conveyed to the appellant. It also contains a recital to the effect that Exhibit B3 is a possession certificate dated 15.1.1993 issued by the Village Officer, Venganellur Village, prior to the execution of Exhibit B1. According to the appellant before executing the sale

deed the properties were verified and it was found that possession of the properties was not in accordance with the area stated in the survey numbers. So a petition was filed before the Village Officer, who inspected the properties and issued Exhibit B3. In the possession certificate it was stated that there were differences in the survey numbers and extent of properties comprised in each survey number. Going by Exhibit B3, properties were comprised in Sy. Nos.1089, 1096, 1091 and 1092 only. The total extent of properties comprised in the above stated survey numbers were stated to be 7 acres and 80 cents. According to the appellant it was the respondent who handed over Exhibit B2 to her. To prove that fact appellant examined D.W.2. D.W.3 is the Scribe. He was examined to prove that the respondent was aware of the contents of Exhibit B2. The Village Officer who issued Exhibit B3 was examined as D.W.7. Trial court took Exhibit B2 as a document of title and held that it is an invalid document since it was not registered as provided under Section 17 of the Registration Act. That observation is illegal. A possession certificate can never be a document of title. In fact appellant

**relied on Exhibit B3 coupled with the evidence of D.Ws.2, 3 and 7 to contend that respondent was aware of the factual position that 3 acres of land comprised in Sy.No.1089 was actually handed over to the appellant. Trial court did not even understand the admissibility and relevancy of Exhibit B3 document. Learned Sub Judge has not properly appreciated Exhibits B1 to B3, X1(f) and the oral evidence of D.Ws.1 to 3 and 6 to 8 while considering the question of possession.**

**15. There is yet another aspect. Along with the suit there was an application to appoint a Commissioner to prepare plan and report. Trial court deputed a Commissioner. Along with the initial report which was marked as Exhibit C1, Exhibit C1(a) rough sketch was also filed. As per the rough sketch on the south western corner the property claimed by the respondent is 15 mts. south of the road and on the south eastern corner 58 mts. south of the road. Thereafter the property was measured with the help of Taluk Surveyor. Exhibit C2(a) is the survey plan. As per the plan the distance to the south eastern corner of the property from the road appears to be more than 51 mts. and distance to the south**

western corner is more than 10 mts. Exhibit C2 is the report of the Commissioner. In paragraph 2 of the report it is stated that in spite of best efforts made by the Surveyor he was unable to locate boundaries of Sy.No.1089 especially northern boundary. The inspection was adjourned to another day. In paragraph 3 of the report it was stated that though efforts were made, it was not possible to identify and locate the properties as per the records produced by the appellant and respondent. So a plot having an area of 2.31 acres as shown by the respondent was identified. In the report it is stated that property lying on the north of Sy.No.1089 belonged to the respondent and hence Commissioner had located an area of 2.31 acres of land from the northern boundary line of Survey number 1089. Commissioner himself had admitted that he could not locate the property as directed by the trial court. But instead of asking for further directions, he prepared a plan as demanded by the respondent. Trial court on a misapprehension of the issues raised took O.S. No.1303 of 1995 as a suit for declaration of title and declared the title of the respondent over plot A shown in Exhibit C2(a) plan. As I

have already stated it is not a suit for declaration of title and possession. Southern boundary of the property is to be fixed only in accordance with actual physical possession. It is to be noted that suit was filed in the year 1995 and till date there is no prayer for declaration of title and recovery and as such even if it is found that respondent is entitled to more property, boundary can be fixed only in relation to the property in his actual possession. As I have already stated Exhibit A6 mortgage deed executed by the respondent shows that he purchased the property under two sale deeds and obtained Exhibit A2 certificate of purchase. Exhibit X1 file shows that property covered by R.S. No.53/2 is owned by Mathukutty also. As I have already stated though initially the properties belonged to strangers, the entire properties were purchased by the paternal uncle of the respondent who in turn sold a portion of the property to the respondent and another portion to his brother. The evidence of the respondent as P.W.1 shows that he was holding the properties and managing the same for his brothers also. So no importance can be given to the survey numbers alone. It is also to be noted that

respondent as P.W.1 had admitted that he was not having any document to prove the title of the property lying on the north of survey number 1089 even though he is the actual owner of that property. The learned counsel for the appellant has argued that the evidence of P.W.1 shows that if 2.31 acres of property is also found to be belonging to him, he will not be able to produce documents of title over the entire property claimed by him. If the attempt of the respondent is to grab a portion of the property which his brother had conveyed to the appellant merely because in the sale deed registered in his name 10 minutes prior to Exhibit B2 sale deed there is a statement to the effect that 2.31 acres of property comprised in Sy. No.1089 was assigned to him and the total extent of property comprised in that survey number is also 4.06 acres, the same cannot be allowed. Trial court ought to have directed the Commissioner to identify and locate the property on the southern boundary of the property covered by Exhibit A2 and owned by respondent according to actual possession. Respondent also could have produced the report or plan prepared, in the Original Petition filed by him before the

**Tribunal. It is also to be noted that along with the plaint respondent produced a photocopy of Exhibit B2 sale deed which necessarily indicates that he was fully aware of the description of the property in Exhibit B2. He had frankly admitted that he had no title over the properties comprised in Sy.Nos.1087 and 1088. He had also admitted that though he is the owner of the property comprised in Sy.No.1088, the document stands in the name of one K.D. Thomas. Trial court has not considered whether the attempt of the respondent was to grab some property which his brother had conveyed to the appellant on account of the confusion regarding the survey numbers and the extent of properties comprised in each survey numbers. Trial court was carried away from the real issues involved in this case. As I have already stated in view of the contentions raised by the parties the only issue arising for consideration was what is the southern boundary of the property purchased by the respondent under sale deed Nos.1110 and 1131 of 1968 culminated in Exhibit A2 certificate of purchase.**

**16. Dismissal of O.S. No.799 of 1996 as a whole is**

**unwarranted and unjustified. Even assuming that appellant was not able to establish her possession upto the point she claimed, a decree ought to have been passed in respect of the property which was found to be in her possession. Since the learned Sub Judge has misconstrued the scope of the suits and raised unnecessary issues and granted reliefs which were not asked for and beyond the scope of the suits, I have no other option, but to set aside the decrees and common judgment passed in the suits and remand both suits to the trial court for fresh disposal in accordance with law after identifying and locating the land claimed by the respondent which he obtained under assignment deeds which culminated in Exhibit A2 purchase certificate and also with reference to Exhibit X1(f) plan prepared in the resurvey proceedings. The properties claimed by the appellant are also to be identified with respect to the title deeds. The trial court shall discuss the evidence and enter into a finding as to whether she is in possession of the properties claimed by her.**

**17. in the result, the appeals are allowed. The decrees and common judgment passed in O.S. No.1303 of 1995 and**

**R.F.A. NO. 272 OF 2006 &  
R.F.A. NO. 112 OF 2007**

**-: 31 :-**

**O.S.No.799 of 1996 are hereby set aside. Both the suits are remanded to the trial court for disposal in accordance with law after identifying and locating the properties in accordance with the present possession of the parties. Both parties shall be given opportunity to adduce further evidence to prove their physical possession over the properties.**

**18. Parties shall appear before the trial court on 26.9.2007.**

**Interlocutory application No.1457 of 2006 will stand closed.**

**K. PADMANABHAN NAIR, JUDGE.**

**VSV**

**K. PADMANABHAN NAIR, J.**

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**R.F.A. NO. 272 OF 2006**

**AND**

**R.F.A. NO. 112 OF 2007**

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**J U D G M E N T**

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**8TH AUGUST, 2007**